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Cynthia Vu

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

FIRST AMERICAN TITLE INSURANCE
COMPANY, a California Corporation,

Plaintiff,

vs.

CYNTHIA THUY VU aka THUY VU, an
individual; and DOES 1 through 10, inclusive,

Defendants.

CYNTHIA VU,

Cross-Complainant,

vs.

FEDERAL DEPOSIT INSURANCE
CORPORATION as RECEIVER FOR UNITED
COMMERCIAL BANK, FINANCIAL TITLE
COMPANY, FIDELITY NATIONAL TITLE
COMPANY, PL & AL HOLDINGS, a California
corporation, U.F. SERVICE CORPORATION,
and ROES 1-10, inclusive,

Cross-Defendants

PL & AL HOLDINGS, a California Corporation,

Case No.: C11-00063 EDL

~~PROPOSED~~ ORDER REMANDING
ACTION TO STATE COURT

Cross-Complainant,

vs.

FEDERAL DEPOSIT INSURANCE
CORPORATION as RECEIVER FOR UNITED
COMMERCIAL BANK; DOES 1 through 10,
inclusive,

Cross-Defendants.

On June 25, 2010, an action was commenced in the Alameda County Superior Court of the State of California, entitled *First American Title Insurance Company, a California Corporation, Plaintiff v. Cynthia Thuy Vu aka Thuy Vu, an individual, Defendant*, bearing case number RG10-522409.

On August 16, 2010, Defendant Cynthia Thuy Vu (hereinafter "Vu") filed a General Denial to the Complaint, as well as a Cross-Complaint for Breach of Contract, Misrepresentation, Escrow Negligence, Negligence in the Sale, restitution to Avoid Unjust Enrichment (Money Had and Received), Declaratory Relief: Comparative Indemnity. Defendant Vu joined inter alia the Federal Deposit Insurance Corporation as Receiver for United Commercial Bank ("FDIC-R for UCB"), Financial Title Company, Fidelity National Title Company, PL & AL Holdings, Inc. (hereinafter "PL&AL"), U.F. Service Corporation.

On September 14, 2010, Cross-Defendant PL&AL filed an Answer to Defendant Cross-Complainant Vu's Cross-Complaint, as well as a Cross-Complaint for Declaratory Relief, Implied Indemnity, Full Equitable Indemnity, and Partial Indemnity, naming FDIC-R for UCB as the sole cross-defendant.

FDIC-R for UCB filed a Notice of Removal of this matter to the United States Federal District Court for the Northern District of California on January 6, 2011, pursuant to *12 USC Section 1819(b)(2)(B)*. Further, on January 13, 2011, FDIC filed two *Federal Rule of Civil Procedure 12(b)* motions to dismiss the Vu and PL&AL Cross-Complaints.

Pursuant to a *Federal Rule of Civil Procedure 41(a)* Stipulation for Dismissal executed by all parties and entered in this Court, both Vu's August 16, 2010 Cross-Complaint and PL&AL's September 14, 2010 Cross-Complaint have been dismissed with prejudice as to FDIC-R for UCB. As a result of the dismissal of the FDIC, this Court no longer has jurisdiction over this matter as afforded by *12 USC Section 1819(b)(2)(B)*. The remaining parties do not have an independent basis for removal to Federal court and the matter involves exclusive state law claims.

When the Federal claims have dropped out of the lawsuit in the early stages and only state law claims remain, it may be an abuse of discretion for the Federal district court to retain the case. *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 349 (1988); *Wren v. Sletten Const. Co.*, 654 F.2d 529, 536 (9th Cir. 1981) (stating, "[t]he doctrine of pendent jurisdiction is one of discretion not power, as long as the federal claims are substantial enough to confer subject-matter jurisdiction on the Federal court ...When state issues apparently predominate and all federal claims are dismissed before trial, the proper exercise of discretion requires dismissal of the state claim."). This discretionary decision is dependent upon what will best accommodate the values of "economy, convenience, fairness, and comity." *Harrell v. 20th Century Ins. Co.* 934, F.2d 203, 205 (9th Cir. 1991).

Based upon the foregoing, and for good cause showing, this case is remanded to Alameda County Superior Court for further adjudication of state law claims.

IT IS SO ORDERED.

Dated: April 18, 2011


ELIZABETH D. LAPORTE
U.S. Magistrate Judge